HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.15176 OF 2007

Between:

M/s.S.Lalaiah & Co.

. . .Petitioner

AND

The Deputy Commissioner (CT),
Saroornagar Division, Nampally, Hyderabad and another

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri Shaik Jeelani Basha

Counsel for the respondents : Government Pleader for Commercial Tax

7th August, 2007

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Per G.S.SINGHVI, CJ

This petition is directed against order dated 29.03.2007 passed by Deputy Commissioner (CT), Saroornagar Division (respondent No.1) under Section 20 (4) of Andhra Pradesh General Sales Tax Act, 1957 (for short 'the State Act') whereby he revised the assessment made by Commercial Tax Officer, Saroornagar Circle, Hyderabad (respondent No.2) for the assessment year 2001-02 (learned counsel for the parties made an agreed statement that the year of assessment is 2002-03 and not 2001-02 and what has been recorded in last three paragraphs of the impugned order is an apparent typographical error).

The petitioner is a partnership firm engaged in the business of execution of works contract. It is registered as dealer under the State Act and the Central Sales Tax Act, 1956 (for short, 'the Central Act'). By an order dated 10.2.2006, respondent No.2 completed the assessment for the assessment year 2002-2003 and held that balance tax amounting to Rs.22,58,285/- is payable by the petitioner. While doing so, respondent No.2 relied on Rule 6 (3)(i) of the Andhra Pradesh General Sales Tax Rules, 1957 (for short, 'the Rules').

After seven months, respondent No.1 issued pre-revision show cause notice dated 13.9.2006 to the petitioner proposing to revise the assessment by invoking Section 5-F of the State Act read with Rules 4 and 6 (2) of the Rules. In the notice, respondent No.1 indicated the gross turnover of the petitioner as Rs.21,12,32,803/-, exempted turnover of Rs.8,69,24,800/- and net turnover as Rs.12,43,08,003/-.

The petitioner submitted reply dated 14.11.2006 and pleaded that the assessment cannot be revised by invoking Rule 6 (2) of the Rules read with Section 5-F of the State Act. It also made a request for grant of opportunity of personal hearing. This is evinced from the last paragraph of reply dated 14.11.2006, which is reproduced below:

> "Without prejudice to the above, we further submit that the proposal to revise the assessment order basing on Rule 6 (2) read with Section 5-F is not correct in view of the decisions mentioned supra. Therefore, we once again repeat and reiterate that the assessing authority has rightly followed the principle while making the assessment. Hence, please withdraw your notice proposing to revise the assessment made under Rule 6 (3)(1) of the APGST Rules and in case your goodself wish to proceed further, we request for an opportunity of personal hearing in this matter."

Respondent No.1 did not accept the petitioner's request for personal hearing and passed order dated 19.3.2007 whereby he revised the assessment and declared that the petitioner is liable to pay tax @ 8% on the entire net turnover of Rs.12,43,08,003/-.

The petitioner has questioned the impugned order on several grounds including the one that the same is vitiated due to violation of the rules of natural justice because opportunity of personal hearing was not granted to its representative.

In the counter-affidavit, the respondents have not denied that the petitioner had made a request for grant of opportunity of personal hearing and that such hearing was not given.

We have heard learned counsel for the parties and scrutinised the record. In our opinion, the order under challenge is liable to be set aside only on the ground of denial of opportunity of personal hearing to the petitioner in terms of the prayer made by it in reply to the show cause notice.

Section 20(1) and (4) of the Act and Rule 31(1) and (6) of the

Rules, which have bearing on this case, read as under:

"**20. Revision by (Commissioner of Commercial Taxes) and other prescribed authorities**:- (1) The Commissioner of Commercial Taxes may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including sub section (2) of this section and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as it thinks fit.
(4) No order shall be passed under sub-section (1) or sub-section (2) enhancing any assessment unless an opportunity has been given to the assessee to show cause against the proposed enhancement."

"**31**(1) If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax or has been under assessed in any year, the assessing authority may subject to the provisions of sub rule (6) determine to the best of his judgment the correct turnover and assess the tax payable on such turnover, after issuing a notice to the dealer and after making such enquiry as he considers necessary within a period of four years from the date on which an order of assessment was served on the dealer.
(6) Where in respect of the turnover referred to in sub rule (1) or tax an order has already been passed under Sec.19 or 20 of the Act the assessing authority shall make a report to the appropriate appellate or revising authority, as the case may be, who shall thereupon, after giving the dealer concerned a reasonable opportunity of being heard, pass such orders as it deems fit."

A careful reading of the above reproduced provisions makes it clear that an order enhancing the assessment cannot be passed unless an opportunity is given to the assessee to show cause against the proposed enhancement and he is given a reasonable opportunity of being heard. Though the expression ''reasonable opportunity of being heard'' has not been defined either under the Act or the Rules, the same deserves to be interpreted in the light of the expansive

meaning given by the Courts to various facets of the rules of natural justice. In a matter like the present one where huge tax liability has been created against the petitioner by suo motu revision of the assessment order, the request of personal hearing made by the petitioner's representative ought to have been entertained because the same would have enabled him/her to convince respondent No.1 that the assessment made by respondent No.2 by applying Rule 6 (3) is correct and Rule 6 (2) cannot be invoked for revising the assessment. This view of ours finds support from the judgment of the Division Bench in **Tirumala Milk Products Limited, Kadiveda Village, Nellore District v. The Government of India, Ministry of Finance**[1].

In the result, the writ petition is allowed. Order dated 29.03.2007 is quashed with the direction to respondent No.1 to pass fresh order after giving opportunity of personal hearing to the representative of the petitioner. The needful be done by the officers concerned within three months from today. The petitioner's representative is directed to appear before respondent No.1 on 03.09.2007.

As a sequel to disposal of the main petition in the manner indicated above, WPMP No.19119 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

7th August, 2007

C.V.NAGARJUNA REDDY, J

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[1] 2005(41) APSTC 6